

**David W. Axelrod, OSB #750231**

Email [daxelrod@schwabe.com](mailto:daxelrod@schwabe.com)

**Matthew R. Wilmot, OSB #061936**

Email [mwilmot@schwabe.com](mailto:mwilmot@schwabe.com)

SCHWABE, WILLIAMSON & WYATT, P.C.

1211 SW 5th Ave., Suite 1900

Portland, OR 97204

Telephone: 503.222.9981

Facsimile: 503.796.2900

**Robert L. Raskopf, pro hac vice pending**

Email [robertraskopf@quinnemanuel.com](mailto:robertraskopf@quinnemanuel.com)

**Jessica Rose, pro hac vice pending**

Email [jessicarose@quinnemanuel.com](mailto:jessicarose@quinnemanuel.com)

QUINN EMANUEL URQUHART & SULLIVAN LLP

51 Madison Avenue, 22<sup>nd</sup> Floor

New York, NY 10010

Telephone: 212.849.7000

Facsimile: 212.849.7100

Of Attorneys for Defendant Wolverine World Wide, Inc.

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON**

**ADIDAS AMERICA, INC. and  
ADIDAS AG,**

Plaintiffs,

v.

**WOLVERINE WORLD WIDE, INC.,**

Defendant.

Case No. 3:12-cv-00945-HZ

DEFENDANT'S ANSWER TO  
PLAINTIFF'S COMPLAINT

Defendant Wolverine World Wide, Inc. ("Wolverine") answers the Complaint of adidas as follows:

1. Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint, and denies those allegations on that basis.

2. Wolverine admits that the footwear depicted in Paragraph 2 of the Complaint is sourced and sold by Wolverine, but otherwise denies the allegations of Paragraph 2 of the Complaint.

3. Wolverine admits that its footwear is not manufactured by adidas and that Wolverine is not affiliated or associated with or authorized by adidas, but otherwise denies the allegations of Paragraph 3 of the Complaint.

4. Wolverine admits that adidas has asserted the claims and seeks the remedies listed in Paragraph 4 of the Complaint, but otherwise denies the allegations of Paragraph 4 of the Complaint.

5. Wolverine admits that this Court has subject matter jurisdictions over adidas' federal claims, but otherwise denies the allegations of Paragraph 5 of the Complaint.

6. The allegations of Paragraph 6 of the Complaint set forth a legal conclusion to which no response is required or warranted.

7. Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 7 of the Complaint, and denies those allegations on that basis.

8. Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint, and denies those allegations on that basis.

9. Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint, and denies those allegations on that basis.

10. Wolverine admits the allegations of Paragraph 10 of the Complaint.

11. Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 11 of the Complaint, and denies those allegations on that basis.

12. Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint, and denies those allegations on that basis.

13. Wolverine admits that what appears to be a copy of a Registration Certificate for U.S. Reg. No. 1,815,956 is attached to the Complaint as Exhibit 2, but Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 13 of the Complaint, and therefore denies those allegations.

14. Wolverine admits that what appears to be a copy of a Registration Certificate for U.S. Reg. No. 1,833,868 is attached to the Complaint as Exhibit 3, but Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 14 of the Complaint, and therefore denies those allegations.

15. Wolverine admits that what appears to be a copy of a Registration Certificate for U.S. Reg. No. 2,278,589 is attached to the Complaint as Exhibit 4, but Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 15 of the Complaint, and therefore denies those allegations.

16. Wolverine admits that what appears to be a copy of a Registration Certificate for U.S. Reg. No. 3,029,129 is attached to the Complaint as Exhibit 5, but Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 16 of the Complaint, and therefore denies those allegations.

17. Wolverine admits that what appears to be a copy of a Registration Certificate for U.S. Reg. No. 3,029,135 is attached to the Complaint as Exhibit 6, but Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 17 of the Complaint, and therefore denies those allegations.

18. Wolverine admits that what appear to be copies of Registration Certificates for U.S. Reg. Nos. 870,136, 961,353, 2,016,963, 2,058,619, 2,278,591, 2,284,308, 2,909,861, 2,999,646, 3,029,127, 3,063,742, 3,063,745, 3,087,329, 3,183,656, 3,183,663, and 3,236,505 are attached to the Complaint as Exhibit 7, but Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 18 of the Complaint, and therefore denies those allegations.

19. Wolverine admits that what appears to be a copy of a Registration Certificate for U.S. Reg. No. 1,674,229 is attached to the Complaint as Exhibit 8, but Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 19 of the Complaint, and therefore denies those allegations.

20. Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations concerning adidas' relationship with the athletics tournaments, organizations, professional athletes and college sports teams alleged in Paragraph 20 of the Complaint, and therefore denies those allegations. Wolverine otherwise denies the allegations of Paragraph 20 of the Complaint.

21. Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations concerning statements about adidas in the media as alleged in Paragraph 21 of the Complaint, and therefore denies those allegations. Wolverine otherwise denies the allegations of Paragraph 21 of the Complaint.

22. Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations concerning adidas' use of the Three-Stripe Mark, annual sales and public recognition as alleged in Paragraph 22 of the Complaint, and therefore denies those allegations. Wolverine otherwise denies the allegations of Paragraph 22 of the Complaint.

23. Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint, and denies those allegations on that basis.

24. Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 24 of the Complaint, and denies those allegations on that basis.

25. Wolverine denies the allegations of Paragraph 25 of the Complaint.

26. Wolverine denies the allegations of Paragraph 26 of the Complaint.

27. Wolverine admits that the footwear manufactured and sold by it identified in the Complaint is not manufactured by adidas and that Wolverine is not associated, connected, licensed, authorized, sponsored, endorsed or approved by adidas. Wolverine otherwise denies the allegations of Paragraph 27 of the Complaint.

28. Wolverine lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 28 of the Complaint pertaining to adidas' activities with

respect to the Three-Stripe Mark and denies said allegations on that basis. Wolverine otherwise denies the allegations of Paragraph 28 of the Complaint.

29. Wolverine admits that it sells certain footwear that may compete with certain goods sold by adidas but otherwise denies the allegations of Paragraph 29 of the Complaint.

30. Wolverine denies the allegations of Paragraph 30 of the Complaint.

31. Wolverine denies the allegations of Paragraph 31 of the Complaint.

32. Wolverine denies the allegations of Paragraph 32 of the Complaint.

33. Wolverine denies the allegations of Paragraph 33 of the Complaint.

34. Wolverine admits that Wolverine communicated with adidas to resolve this dispute and that no resolution has been reached as of the date of this Answer. Except as expressly admitted, Wolverine denies the allegations of Paragraph 34 of the Complaint.

35. Wolverine repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 34.

36. Wolverine denies the allegations of Paragraph 36 of the Complaint.

37. Wolverine denies the allegations of Paragraph 37 of the Complaint.

38. Wolverine denies the allegations of Paragraph 38 of the Complaint.

39. Wolverine denies the allegations of Paragraph 39 of the Complaint.

40. Wolverine repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 39.

41. Wolverine denies the allegations of Paragraph 41 of the Complaint.

42. Wolverine denies the allegations of Paragraph 42 of the Complaint.

43. Wolverine denies the allegations of Paragraph 43 of the Complaint.

44. Wolverine denies the allegations of Paragraph 44 of the Complaint.

45. Wolverine repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 44.

46. Wolverine denies the allegations of Paragraph 46 of the Complaint

47. Wolverine denies the allegations of Paragraph 47 of the Complaint.

48. Wolverine repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 47.

49. Wolverine denies the allegations of Paragraph 49 of the Complaint.

50. Wolverine denies the allegations of Paragraph 50 of the Complaint.

51. Wolverine denies the allegations of Paragraph 51 of the Complaint.

52. Wolverine denies the allegations of Paragraph 52 of the Complaint.

53. Wolverine repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 52.

54. Wolverine denies the allegations of Paragraph 54 of the Complaint.

55. Wolverine denies the allegations of Paragraph 55 of the Complaint.

56. Wolverine denies the allegations of Paragraph 56 of the Complaint.

57. Wolverine denies the allegations of Paragraph 57 of the Complaint.

58. Wolverine repeats and incorporates by reference its responses to the allegations in paragraphs 1 through 57.

59. Wolverine denies the allegations of Paragraph 59 of the Complaint.

60. Wolverine denies the allegations of Paragraph 60 of the Complaint.

61. Wolverine denies the allegations of Paragraph 61 of the Complaint.

62. Wolverine denies that adidas is entitled to any of the relief demanded in the Prayer for Relief.

### **AFFIRMATIVE DEFENSES**

By alleging the Affirmative Defenses set forth below, Wolverine does not agree or concede that it bears the burden of proof or the burden of persuasion on any of these issues, whether in whole or in part.

#### **FIRST AFFIRMATIVE DEFENSE** **(Failure to State a Claim)**

The Complaint fails to state a valid claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE** **(Lack of Confusion)**

adidas' claims are barred, in whole or in part, due to the absence of actual or likely consumer confusion regarding the source, sponsorship or affiliation of the Wolverine footwear at issue.

#### **THIRD AFFIRMATIVE DEFENSE** **(Lack Of Secondary Meaning and/or Distinctiveness)**

adidas' claims are barred, in whole or in part, on the basis that the marks at issue lack distinctiveness, including, without limitation, secondary meaning.

#### **FOURTH AFFIRMATIVE DEFENSE** **(Lack of Trademark Use)**

adidas' claims are barred, in whole or in part, on the basis that the designs alleged to infringe adidas' Three-Stripes Mark are functional and/or ornamental in nature and therefore do not constitute a trademark use.

#### **FIFTH AFFIRMATIVE DEFENSE** **(Functionality)**

adidas' claims are barred, in whole or in part, because the asserted marks are functional.



**SIXTH AFFIRMATIVE DEFENSE**  
**(Trademark Misuse)**

adidas' claims are barred, in whole or in part, by the misuse of its trademarks in violation of U.S. antitrust laws.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(No Deceptive Conduct)**

adidas' claims are barred, in whole or in part, because Wolverine has not engaged in any conduct that is likely to deceive reasonable members of the public.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(No Valid Trademark)**

adidas' claims are barred in whole or in part because adidas has no valid, protectable marks through which it enjoys rights that may be asserted against Wolverine.

**NINTH AFFIRMATIVE DEFENSE**  
**(Generic Terms)**

adidas' claims are barred in whole or in part because the asserted marks are generic.

**TENTH AFFIRMATIVE DEFENSE**  
**(Abandonment)**

adidas' claims are barred in whole or in part by abandonment of the asserted marks.

**ELEVENTH AFFIRMATIVE DEFENSE**  
**(No Willful Infringement)**

adidas' claims for profits, enhanced damages and an award of fees and costs against Wolverine have no basis in fact or law and should be denied.

**TWELFTH AFFIRMATIVE DEFENSE**  
**(Third-Party Use)**

adidas' claims are barred, in whole or in part, by reason of third parties' use of the asserted marks at issue.

**THIRTEENTH AFFIRMATIVE DEFENSE**  
**(Laches)**

adidas' claims are barred, in whole or in part, by the doctrine of laches.

**FOURTEENTH AFFIRMATIVE DEFENSE**  
**(Statute of Limitations)**

adidas' claims are barred, in whole or in part, by not having been brought within the applicable statutes of limitations.

**FIFTEENTH AFFIRMATIVE DEFENSE**  
**(Conflicts of Laws)**

adidas' state statutory claims based on state statutes from other jurisdictions are barred, in whole or in part, based on conflicts of laws principles.

**SIXTEENTH AFFIRMATIVE DEFENSE**  
**(Waiver, Acquiescence, Estoppel)**

adidas' claims are barred, in whole or in part, by the doctrines of waiver, acquiescence and estoppel.

**SEVENTEENTH AFFIRMATIVE DEFENSE**  
**(Unclean Hands)**

adidas' claims are barred, in whole or in part, by the doctrine of unclean hands.

**RESERVATION OF ADDITIONAL DEFENSES**

Wolverine specifically gives notice that it intends to rely upon such other defenses as may become available by law, or pursuant to statute, or discovery proceedings in this case, and hereby reserves the right to amend its Answer and assert such defenses.

**RELIEF REQUESTED**

WHEREFORE, Wolverine respectfully requests the following relief:

1. A judgment in favor of Wolverine denying adidas' claims, all relief requested in the Complaint, and dismissing adidas' Complaint with prejudice;

2. That Wolverine be awarded its costs of suit, including reasonable attorney's fees;  
and

3. That the Court award Wolverine such other and further relief as the Court deems  
just and proper.

Dated this 15th day of October, 2012.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: s/ David W. Axelrod  
David W. Axelrod, OSB #750231  
Matthew R. Wilmot, OSB #061936  
Telephone 503.222.9981

QUINN EMANUEL URQUHART & SULLIVAN LLP  
Robert L. Raskopf, *pro hac vice pending*  
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